

Service Date: October 15, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF MISSOULA)	UTILITY DIVISION
ELECTRIC COOPERATIVE)	
and NORTHWESTERN ENERGY,)	DOCKET NO. D2004.6.93
Application for Approval of an Exclusive)	ORDER NO. 6605
Service Agreement)	

ORDER APPROVING EXCLUSIVE SERVICE AGREEMENT

Introduction

1. On June 18, 2004, the electric facilities providers Missoula Electric Cooperative (MEC) and NorthWestern Energy (NWE) filed an application before the Public Service Commission (PSC) requesting approval of an exclusive service agreement. The application is made pursuant to Montana's Territorial Integrity Act (Act), §§ 69-5-101 through 69-5-112, MCA.

2. The agreement establishes the rights of each provider to provide electric service to the exclusion of the other in an area of the Clark Fork River valley west of the City of Missoula, Montana. The agreement involves no transfer or exchange of customers. MEC and NWE state that the agreement will not affect reliability of service and will eliminate duplication of service facilities.

3. Exclusive service agreements, as authorized by §§ 69-5-108, MCA, are a division of certain geographical areas that present a possibility of future need for electric service, but also have, within or nearby, more than one utility capable of providing the anticipated service. The agreements designate the utility that will have the exclusive right to serve in each of the areas, as divided into exclusive service territories by agreement. In each territory, exceptions pertaining to the service of large customers may apply. PSC approval of exclusive service agreements is required pursuant to § 69-5-112, MCA.

4. On August 6, 2004, the PSC issued a public notice of opportunity for hearing on the MEC / NWE exclusive service agreement. No request for hearing has been received and no public comments have been received. The PSC determines that the matter can be properly decided without further proceedings.

Findings of Fact

5. MEC, a party to the agreement now being considered, is an electric cooperative providing electric service in or near the areas which are the subject of the agreement. NWE, a party to the agreement now being considered, is a public utility providing electric service in or near the area which is the subject of the agreement. The MEC / NWE agreement pertains to an area of the Clark Fork River valley west of the City of Missoula, Montana. The agreement identifies the geographical area involved and the division of that area into exclusive service territories, including as described by map and written description.

6. There is no reasonable likelihood that the agreement will cause a decrease in the reliability of electric service to the existing or future customers of the utilities involved. There is a reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of electric service facilities.

7. The exclusive service agreement, including the agreement's attachments and accompanying maps and written descriptions, as filed before the PSC and maintained in the records of the PSC, is by this reference adopted herein as an integral part of this final order. The referenced agreement, primarily because of the maps involved, are not readily suitable for attachment to this final order.

Conclusions of Law

8. The MEC / NWE application for approval of the exclusive service agreement, as described above, and the agreement itself, as referenced above, are proper in form and have been properly noticed and processed in accordance with all applicable provisions of the Act (territorial integrity act for electric suppliers), particularly at §§ 69-5-108, 69-5-109, and 69-5-112, MCA, as

well as all applicable provisions of Title 69, MCA (Public Utilities), Title 2, Chapter 4, MCA (MAPA), and ARM Title 3, Chapter 2 (PSC Procedural Rules).

9. MEC, as an electric cooperative providing electric services, and NWE, as a public utility providing electric services, are "utilities" and "electric facilities providers" (for present purposes these are equivalent terms and will be referred to as "utilities") within the meanings of those terms in the Act. §§ 69-5-102(3) and 69-5-102(8), MCA. As utilities, NWE and MEC are authorized by the Act to enter exclusive service agreements. §§ 69-5-108, MCA. The PSC has jurisdiction regarding review and approval of exclusive service agreements pursuant to § 69-5-112, MCA.

10. The agreement now being considered implements § 69-5-108, MCA, which allows for exclusive service agreements. The agreement has been submitted to the PSC for approval in accordance with § 69-5-112, MCA. The agreement identifies the geographical areas involved and the division of the areas to be served, including by map and written description, and presents the terms and conditions of the agreement in accordance with § 69-5-112(1)(a) and (b), MCA. In accordance with § 69-5-112(3)(a), MCA, the PSC has considered the likelihood that the agreement will cause a decrease in the reliability of electric service to existing or future customers of the utilities. The PSC determines that there is no such likelihood. In accordance with § 69-5-112(3)(b), MCA, the PSC has considered the likelihood that the agreement will eliminate existing or potential uneconomic duplication of electric service facilities. The PSC determines that there is such likelihood.

11. Exclusive service agreements do not apply to certain large customers. § 69-5-109, MCA. Electric service to large customers (400 kw or larger load), including those within the agreed-to exclusive service areas, remains governed by § 69-5-106, MCA, which involves a determination, primarily by the competing utilities, as to which has the lowest cost of extending its facilities to serve the customer, no matter where the large customer is located in relation to their existing facilities.

12. The MEC / NWE exclusive service agreement is in compliance with the Act, fulfills the purposes of the Act, is in the public interest as that interest is stated or implied by the

Act, and should be approved.

ORDER

IT IS HEREBY ORDERED the MEC / NWE exclusive service agreement, as filed and incorporated herein by reference, is approved as filed. It is further ordered that the exclusive service agreement creates one or more exclusive service territories and no utility or electric services provider, except the one so designated to do so in the agreement, may offer, construct, or extend electric service facilities into any of the identified exclusive service territories, except as may otherwise be specifically allowed by law (*e.g.*, service to large customers) and in accordance with all procedures which may govern application of such exception. No modification, change, or correction of any agreement approved in this final order may be made without first obtaining PSC approval. § 69-5-112, MCA. Each utility or electric service provider that is party to an approved agreement shall make the exclusive service agreement to which it is a party readily accessible to the public in the area affected by maintaining a copy of the agreement in the utility business office located nearest that exclusive service area.

Done and dated this 7th day of September, 2004, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.